

## REMARKS

Applicants have carefully reviewed this Application in light of the Final Office Action mailed October 11, 2007. Claims 2-11 and 12-20 are pending in this Application, and Applicants have cancelled Claims 1 and 7 without prejudice or disclaimer. Claims 2-7, 10-11, 13-14, 16, 19, and 20 stand rejected under 35 U.S.C. § 102(b), and Claims 7-9, 15, 17, and 18 stand rejected under 35 U.S.C. § 103(a). Claims 2-5, 7, 13-16, 19 and 20 have been amended to further define various features of Applicants' invention. Applicants respectfully request reconsideration and favorable action in this case. Applicants respectfully submit that the nature of the amendments made herein do not require further search or consideration. For example, Claims 3 and 13 have merely been rewritten in independent form to include their respective base claims, and Claim 7 has been amended to include an analogous feature recited in existing Claims 2 and 13.

### Rejections under 35 U.S.C. § 102

Claims 2-7, 10-11, 13-14, 16, 19 and 20 stand rejected under 35 U.S.C. § 102 (b) as being anticipated by U.S. Patent No. 6,285,656 issued to Srinivas Chaganty et al. ("*Chaganty*").

*Chaganty* discloses a network flow switch system that uses an active flow switch and a passive flow switch in conjunction to achieve redundancy or failover. (Abstract). The active and passive switches are connected to each other via failover links. (Col. 2, Lines 39-42). Status signals are transmitted between the switches across the failover links. (Col. 4, Lines 1-2). When the passive switch detects a failure of the active switch, the passive switch becomes active. (Col. 3, Lines 8-11).

Amended Claim 3, which has been rewritten in independent form to include all limitations of original Claim 1, recites a system "wherein [a] status circuit communicates link status of [a] switch-side port to [a] fail-over circuit" and "wherein [a] fail-over circuit [of a switch] automatically disables [a] server-side port [of the switch], in response to receiving a link status of down from [a] status circuit [of the switch]."

Amended Claim 7 recites an apparatus "wherein the status circuit communicates link status of the switch-side port to the fail-over circuit" and "wherein [a] fail-over circuit [of a switch] automatically disables [a] server-side port [of the switch]..., in response to receiving a

link status of down for [a] switch-side port [of the switch] from [a] status circuit [of the switch].”

Amended Claim 13, which has been rewritten in independent form to include all limitations of original Claim 12, recites a method comprising “monitoring link status of a switch-side port of a switch” “in response to detecting a link status of down on [a] switch-side port [of the switch], automatically disabling [a] server-side port of the switch.”

Applicants respectfully submit that *Chaganty* fails to disclose each and every element of the Applicants’ invention. For example, *Chaganty* fails to teach, disclose, or suggest communicating or monitoring a “link status of [a] switch-side port” and a system, apparatus or method “wherein [a] fail-over circuit [of a switch] automatically disables [a] server-side port [of the switch], in response to receiving a link status of down from [a] status circuit [of the switch].”

The Examiner argues that the limitation of communicating or monitoring a “link status of [a] switch-side port” as recited in Claims 3, 7, and 13 are disclosed by *Chaganty* as follows:

*Chaganty* further discloses *a status circuit in the first switch in communicating link status of the switch-side port to a fail-over circuit* (Col. 8 lines 38-39 Flow switch continues to monitor status signals and status signal requests where the status circuit and fail-over circuit are part of the switch).

(Office Action, Pages 3, 5, 6).

The portion of *Chaganty* cited by the Examiner merely states “Flow switch 105 continues to monitor status signals and status signal requests.” (Col. 8, lines 38-39). However, as argued by the Applicants in their previous response, neither this portion of *Chaganty* nor any other part of *Chaganty* contemplates that the monitored status signals relate to a “link status of [a] switch-side port” as recited in Claims 3, 7, and 13. Instead, *Chaganty* contemplates the monitoring of status signals across a failover link connecting active and passive switches. (Col. 3, Lines 8-11; Col. 4, Lines 1-2). The cited reference does not teach any fail-over system or method in which the switch-side ports, to which Y-cables 145 and 150 are attached leading to routers 175 and 180, are monitored. (Col. 2, Lines 61-65. *See also* Fig. 1). Accordingly, the monitoring of status signals on the failover link as contemplated in *Chaganty* is distinct from the communication and monitoring of link status of the switch-side port recited in Claims 3, 7 and 13.

In response to this argument, the Examiner asserts that *Chaganty* does disclose monitoring of the link status of a switch-side port because “[t]he status signals monitor the switch, which includes the switch-side port. If a failure with the switch is detected, then a failure with the switch-side port is also detected.” (Office Action, Page 14). The Examiner’s rejection, however, fails because *Chaganty* fails to disclose the monitoring of a link status of a switch-side port as inherent or necessarily present. To establish that a claim element is inherent in a prior art reference, extrinsic evidence “must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill.” *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999); M.P.E.P. § 2112(IV). Inherency, however, may not be established by probabilities or possibilities. *Id.* In the present case, it appears as if the Examiner has assumed that a status message relating to a switch failure in *Chaganty* might possibly include information regarding the link status of the switch’s switch-side port. However, nowhere in *Chaganty* or in the evidence currently entered of record in the current application it is contemplated that a status message relating to a switch failure may necessarily include information regarding the link status of the switch’s switch-side port. If the Examiner is relying upon personal knowledge, no affidavit has been provided. See M.P.E.P. § 2144.03 (setting forth the requirements of reliance of common knowledge in the art).

The Examiner also alleges that *Chaganty* discloses “wherein [a] fail-over circuit [of a switch] automatically disables [a] server-side port [of the switch], in response to receiving a link status of down from [a] status circuit [of the switch].” The Examiner asserts that this element of Claims 3, 7 and 13 is disclosed by *Chaganty* at Col. 3, lines 46-47 which merely discloses “While in a passive state, flow switch continues to hold all of its Ethernet ports in a disabled state (except failover link 115).” Even if this passage could be construed to be equivalent to the disabling of a server-side port of a switch (which Applicants do not concede), neither this passage of *Chaganty* nor any other portion of *Chaganty* contemplate that such putative disabling is performed by a fail-over circuit of the switch or is in response to receiving a link status of down from a status circuit of the switch. To the contrary, the switch of *Chaganty* enters a passive state (and thus disables its Ethernet ports) only when receiving a status message from an *off-switch* failover circuit indicating that *another* switch is active.

For at least these reasons, *Chaganty* fails to disclose the recited limitations and, therefore, cannot anticipate Claims 1, 7, and 12. Given that Claims 2-6 depend from Claim 1, Claims 10 and 11 depend from Claim 7, and Claims 13, 14, 16, 19, and 20 depend from Claim 12, Applicants respectfully submit that Claims 2-6, 10, 11, 13, 14, 16, 19, and 20 are allowable. As such, Applicants respectfully request that the Examiner withdraw the rejections and allow Claims 1-7, 10-14, 16, 19, and 20.

**Rejections under 35 U.S.C. § 103**

Claim 8 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over *Chaganty* in view of U.S. Patent No. 6,381,218 issued to Michael S. McIntyre et al. ("*McIntyre*").

Claims 9, 15, 17 and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Chaganty* in view of U.S. Patent No. 6,032,194 issued to Silvano Gai et al. ("*Gai*").

Claim 7 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,882,653 issued to Yoshinao Kiuchi et al. ("*Kiuchi*") in view of U.S. Patent Application Publication No. 2002/0176355 by Alan Mimms ("*Mimms*").

The Examiner's rejection of Claims 1 and 12 under 35 U.S.C. § 103(a) as being unpatentable over *Kiuchi* in view of *Mimms* is rendered moot by the Applicants cancellation of Claims 1 and 12.

*Kiuchi* discloses a gateway system for interconnecting an IP network with a telephone network and a method for controlling alternative routing due to faults in the IP network or gateway system. (Col. 1, Lines 1-7). When a fault is detected by the gateway system, the controller in the gateway system initiates an alternative routing instructing method to inform the telephone network how to proceed in connecting a call. (Col. 2, Lines 24-32. *See also* Fig. 6). The telephone network then connects to a different line in order to complete the call. (*See* Col. 2, Lines 32-35. *See also* Fig. 6).

*Mimms* discloses a network in which a secondary router monitors the information exchanged between a primary router and a peer router in order to maintain awareness of the current state of the network topology in anticipation of a fail-over from the primary to the secondary router. (Abstract).

Amended Claim 7 recites an apparatus comprising “wherein the fail-over circuit automatically disables the server-side port *in substantially real-time*, in response to receiving a link status of down for the switch-side port from the status circuit.” (emphasis added).

Applicants respectfully submit that the cited references fail to disclose every element of the Applicants’ invention. For example, each of *Kiuchi* and *Mimms* fails to teach, disclose, or suggest “wherein the fail-over circuit automatically disables the server-side port *in substantially real-time*, in response to receiving a link status of down for the switch-side port from the status circuit,” as recited in amended Claim 7.

Given that Claims 8 and 9 depend from and provide further patentable limitations to allowable Claim 7, and Claims 15, 17, and 18 depend from and provide further patentable limitations to Claim 13 (shown to be allowable above), Applicants respectfully submit that Claims 8, 9, 15, 17, and 18 are allowable. Accordingly, Applicants respectfully request that the Examiner withdraw the rejections and allow Claims 7-9, 15, 17, and 18.

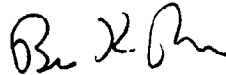
**CONCLUSION**

Applicants appreciate the Examiner's careful review of the application. Applicants have now made an earnest effort to place this case in condition for allowance in light of the amendments and remarks set forth above. For the foregoing reasons, Applicants respectfully request reconsideration and full allowance of Claims 2-11 and 13-20, as amended.

Applicants believe there are no fees due at this time, however, the Commissioner is hereby authorized to charge any fees necessary or credit any overpayment to Deposit Account No. 50-2148 of Baker Botts L.L.P.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicants' attorney at 512.322.2684.

Respectfully submitted,  
BAKER BOTTS L.L.P.  
Attorney for Applicants



Brian K. Prewitt  
Reg. No. 60,135

Date: Dec. 10, 2007

SEND CORRESPONDENCE TO:

BAKER BOTTS L.L.P.

CUSTOMER NO. **23640**

512.322.2689

512.322.8383 (fax)